



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	State Water Control Board
<b>VAC Chapter Number:</b>	9 VAC 25-20
<b>Regulation Title:</b>	Fees for Permits and Certificates
<b>Action Title:</b>	Increase maximum allowable fees in accordance with §62.1-44.15.6 of the Code of Virginia
<b>Date:</b>	April 2, 2003

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

This regulatory action amends the fees for processing applications for permits and certificates. The amendments increase the fees the State Water Control Board charges. The regulatory amendments will replace emergency regulation amendments which will expire July 1, 2003.

The amendments to the regulation also include 1) changes to the definitions for Virginia Water Protection (VWP) Permit project categories to reflect the current definitions for such projects, 2) recognition that there is no permit fee for VWP projects impacting less than one tenth of an acre, and 3) addition of fee schedules that become effective, in accordance with the enabling legislation, on July 1, 2004.

One minor editorial change was made in § 9 VAC 25-20-10 in the definition of VWP Category I Project.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

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The State Water Control Board adopted the amendments to the regulation at their April 15, 2003 meeting.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

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The basis for the proposed regulatory amendment is the Act of Assembly amending § 62.1-44.15:6 of the Code of Virginia. The Act of Assembly required that the State Water Control Board promulgate regulations to carry out the provisions of the act. “That the Virginia Waste Management Board and the State Water Control Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.” (Cite Acts of Assembly, S 592, Item 2). Full text of the Act of Assembly is available at <http://leg1.state.va.us/cgi-bin/legp504.exe?021+ful+SB592ER>. The statute is available at <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.15C6>. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

### Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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Fees for permits and certificates are authorized to recover, up to the maximums specified in statute, the direct and indirect costs associated with application review and permit or certificate issuance. The required January 2002 Permit Fee Program Evaluation Report to the General Assembly indicates that in Fiscal Year 2001 actual water permit program costs exceeded

\$10.6 million, whereas permit fee revenues were only slightly above \$1 million. Additionally, the agency's budget was reduced by approximately \$3 million per year with the expectation that these funds would be recouped through the increase in fees for permits and certificates. The amendment to this regulation is intended to recoup at least a portion of the funds removed from the agency's budget.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

The regulation is being revised to reflect the changes in maximum amounts as specified in §62.1-44.15:6 of the Code of Virginia. Additional amendments to the existing emergency regulation include 1) changes to the definitions in Section 9 VAC 25-20-10 for Virginia Water Protection (VWP) Permit Project categories to reflect the current definitions for such projects, 2) changes to Section 9 VAC 25-20-130 in recognition that there is no permit fee for VWP Permits for projects impacting less than one tenth of an acre, and 3) addition of fee schedules in Sections 9 VAC 25-20-110, 120, and 130 that will become effective July 1, 2004 in accordance with §62.1-44.15:6 of the Code of Virginia.

### Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

The primary disadvantage to the regulated community is that the cost to obtain a permit from the State Water Control Board will triple. The increased revenue is the primary advantage to the Department of Environmental Quality and the Commonwealth, recouping at least a portion of the funds removed from the agency's budget based on the 2002 Acts of Appropriation.

### Statement of Changes Made Since the Proposed Stage

*Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.*

There were no substantive changes made to the text of the proposed regulation since its publication. One minor editorial change was made in § 9 VAC 25-20-10 in the definition of VWP Category I Project.

## Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

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Comment 1 - The Department of Conservation and Recreation (DCR) commented that §62.1-44.15:6 of the Code of Virginia identifies both DCR and the Department of Game and Inland Fisheries as additional agencies that may incur costs associated with the processing of an application for a permit issued by the State Water Control Board. Although DCR acknowledges that this language is not part of the proposed amendments, DCR feels that these involved agencies should discuss the process under the statute and determine how it might be implemented. Additionally, DCR recommends that permit fees be waived for all state agencies, and if this is not possible, that a multi-tiered fee schedule be developed to offset the added financial burden to other state agencies that are also dealing with reduced budgets.

Agency Response - Although DEQ recognizes the increased economic burden the increase in fees has on permit applicants, it has been and continues to be DEQ's practice to charge all permit applicants fees for processing permit applications, regardless of whether the applicant is a public or private entity. The Governor's 2002-04 budget reduced general fund support for permitting activities by \$2.5 million the first year and \$3.7 million the second year. To replace the loss of this general fund support, the Code of Virginia was amended to increase the maximum allowable fees associated with hazardous waste management, solid waste management, and the DEQ's water program. This amendment is specifically in response to that legislation. The clear intent of the legislation was to replace the loss of general fund support for these permit programs. If fees are not increased for state agencies, either other permittees would have to pay more or additional general funds would be needed.

In accordance with the enabling legislation, on July 1, 2004 the maximum allowable permit fees revert to the levels in effect prior to July 1, 2002. The Secretary of Natural Resources has been tasked by the General Assembly with studying DEQ's program funding needs and the appropriate fee structure for meeting those needs, and it is anticipated that the fee regulation may be amended to reflect the conclusions and recommendations of the study. The DEQ is currently meeting with affected stakeholders and researching its needs relative to permit fees and alternative fee structures.

Comment 2 - The Department of Corrections (DOC) commented that the proposed regulation is primarily to increase the fees for permits and certificates for the purpose of recouping lost revenue from budget reductions. Because additional funding would have to be received by the DOC to cover the additional costs associated with obtaining a permit, DOC indicates that no additional overall savings would be realized for the Commonwealth. The DOC's budget was not increased as a result of DEQ's increase in permit fees and therefore other critical areas of the DOC's budget have been cut to fund the permit fee increases. The DOC opposes the amendment.

Agency Response - Although DEQ recognizes the additional economic burden the increase in fees has on all affected permit applicants, it has been and continues to be DEQ's practice to

charge all such permit applicants the fees for processing permit applications, regardless of whether the applicant is a public or private entity. However, this practice may change based on the results of the fee study also discussed in the response to Comment 1.

Comment 3 - The Department of Transportation (DOT) opposes the proposed amendments to the fee regulation and requests that the regulation be amended to exempt DOT from the changes. DOT contends that the proposed changes are not consistent with the Code of Virginia and are not supported by the man-hours required to process permits, nor do they reflect the complexity of the permit process. DOT comments that it is an entity adversely affected by the threefold increase in permit fees. The economic burden associated with the fee increases will affect DOT's ability to construct and maintain the highway system of the Commonwealth.

Agency Response - The Department of Transportation (DOT) contends that because the intent of the regulation amendments is to recoup at least a portion of the funds removed from the DEQ's budget, the proposed regulation amendments are not in accordance with the purpose for permit fees as specified in the Code of Virginia. As explained in the response to Comment 1, the specific intent of the legislative amendment was to enable the DEQ to recoup funds removed from the DEQ's budget and cover a portion of the costs of the permit programs. The regulatory amendments proposed are in accordance with this intent.

The DOT contends that DOT is an entity particularly affected by the proposed amendments. With the advent of triple fee increases, the DOT's task of delivering the best transportation system on time and on budget may become more difficult to successfully complete, and routine maintenance projects statewide could be jeopardized by the increased fee payment since the fee alone could constitute a major portion of the allocated budget for a particular project. The DEQ recognizes the additional economic burden placed on affected applicants for permits. However, it has been and continues to be DEQ's practice to charge all permit applicants fees for processing permit applications, regardless of whether the applicant is a public or private entity.

The bulk of the permits DOT uses are Virginia Water Protection Permits (VWPP) and VPDES General Permits for Discharges from Construction Activities. The DOT contends that the amount charged by DEQ for these permits does not reflect the actual costs for processing the permit applications for the DOT. The DOT provides specific examples of methods used to streamline the permitting process at DOT and provides estimates of the time and cost to DEQ to process their applications. The fees charged for processing permit applications are based on the average level of effort to process permit applications for all applicants, not just one specific entity. Additionally, in the case of some general permits, the amount collected also has to be considered, as the fees are not fixed amounts but are prorated based on the expiration date of the general permit. On a programmatic basis, as outlined in the Report to the General Assembly, "Permit Fee Program Evaluation, January 2002", direct costs for the Water Permit Program in 2002 were over \$8.8 million, whereas only slightly more than \$1 million were collected in permit fees.

The DOT contends that it appears the fees in surrounding states were not considered in developing the amendments to the subject regulation, and cites permit fee ranges for Virginia as well as North Carolina, Tennessee, Kentucky, West Virginia, Pennsylvania and Maryland in

support of their contention. A comparison of fees is provided in the Report to the General Assembly, "Permit Fee Program Evaluation, January 2002". This comparison shows that when compared to the states where water program costs for FY2001 were similar to Virginia's costs, even with a threefold increase, the total fee revenue collected by Virginia in FY2001 would be substantially less than in these other states. In light of this, the DEQ does not feel that permit fees in Virginia place existing or prospective industries in the Commonwealth at a competitive disadvantage.

In accordance with the enabling legislation, on July 1, 2004 the maximum allowable permit fees revert to the levels in effect prior to July 1, 2002. As such, the Secretary of Natural Resources has been tasked by the General Assembly with studying DEQ's program funding needs and the appropriate fee structure for meeting those needs, and it is anticipated that the fee regulation may be amended to reflect the conclusions and recommendations of the study. The DEQ is currently meeting with affected stakeholders and researching its needs relative to permit fees and alternative fee structures.

Comment 4 – The Association of Virginia Potato and Vegetable Growers, Inc. opposes the increases in fees for permits and certificates. The Association feels that the fees as proposed are excessively high and will cause undue hardship on those affected. The Association also feels that the VWP permit fees could very negatively impact the agricultural community and that tripling the fees and shifting the burden to applicants who must apply for permission because of state mandated regulation is unfair.

Agency Response – In accordance with §62.1-44.15:6.B, DEQ does not charge fees for permits pertaining to a farming operation engaged in production for market. In addition, in accordance with the enabling legislation, on July 1, 2004 the maximum allowable permit fees revert to the levels in effect prior to July 1, 2002. The Secretary of Natural Resources has been tasked by the General Assembly with studying DEQ's program funding needs and the appropriate fee structure for meeting those needs, and it is anticipated that the fee regulation may be amended to reflect the conclusions and recommendations of the study. The DEQ is currently meeting with affected stakeholders and researching its needs relative to permit fees and alternative fee structures.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

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The following changes to the regulation are proposed:

9 VAC 25-20-10. Definitions – The definitions for Virginia Water Protection (VWP) Permit Project Category were changed to reflect the current definitions for such projects

9 VAC 25-20-110. Fee schedules for individual new permit issuance and individual existing permit issuance – The fee schedules were amended to reflect a 300 percent increase in the fees stipulated in the schedule. Additionally, to comply with the enabling legislation, Section 9 VAC 25-20-110.B was added to reflect the reduced fee schedules that will go into effect on July 1, 2004.

9 VAC 25-20-120. Fee Schedules for major modification of individual permits or certificates requested by the permit or certificate holder - As in 9 VAC 25-120-110, the fee schedules were amended to reflect a 300 percent increase in the fees stipulated in the schedule. Section 9 VAC 25-20-120.B was added to reflect reduced fee schedules that will go into effect July 1, 2004 in accordance with the enabling legislation.

9 VAC 25-20-130. Fees for filing registration statements for general permits issued by the board – The fees for filing registration statements for general permits issued by the Board were raised by 300 percent in accordance with the enabling legislation. Additionally, Section 9 VAC 25-20-130.B was added to reflect the reduction in fees effective July 1, 2004 required by the enabling legislation.

### Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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Generally only the fee for a General VPDES Permit for Sewage Discharges of Less Than or Equal To 1000 Gallons Per Day has a direct impact on the disposal family income. However, it is possible that in some other cases, the increased fees for permits and certificates will be passed on by the affected entities to their customers through increased connection and user fees. This could have an impact on disposal family income.